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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,988	12/19/2001	Thomas Harold Roessler	KCC-15,369	3706
35844	7590	12/03/2003	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			AFTERGUT, JEFF H	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,988

Applicant(s)

ROESSLER ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3,4,7. 6) ☐ Other:

Election/Restrictions

1. The restriction requirement is hereby withdrawn as a function of applicant's amendment to the claims. Applicant is advised that the election of species not only applied to the article of manufacture but also to the method of manufacturing, however it appears that the use of low tension or no tension were NOT mutually exclusive of each other in light of claim 14 which included both low tension elastic and no tension on the elastic materials.

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 12, 13, 15-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baird.

Baird taught that it was known at the time the invention was made to attach an elastic material in a stretched condition to a pair of exterior webs of material which restrained the elastic and prevented the elastic from shrilling the finished assembly. The reference additionally suggested that subsequent to manufacture of the undergarment with the composite elastic material one skilled in the art would have mechanically manipulated the prestretched and

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restrained elastic composite in order to sever the bond between the prestretched elastic material and the exterior webs (wherein the consumer can manipulate the same in order to render the region elastic). The mechanical manipulation included stretching the finished assembly in the region where one desired elasticity and the formation of a shrill. The reference suggested that the materials onto which one laminated the elastics to would have included nonwovens as well as flat films. The applicant is advised that as such it is clear that the elastics were attached to a material which was capable of being stretched in a direction where one desired elasticity and that the composite elastic was in an ungathered condition when the product was formed and supplied to the consumer wherein one was able to manipulate the article to attain the desired gather post manufacturing. The elastic composite material was used to manufacture disposable diapers. The reference additionally suggested that it was known per se in the art to apply a heat shrinkable elastic material upon the web in order to render a portion of the web elastic subsequent to manufacture wherein the heat shrinkable material was applied under a no tension or low tension condition and the finished assembly was then subjected to heat shrinking. The reference suggested that it was known in the art for the consumer to activate the heat shrinkable elastics with heat application when heat shrinkable elastics were employed. the reference suggested that the elastic materials of the invention (whether it be the heat shrinkable elastics or the mechanically manipulated elastic materials) would have been useful in the manufacture of disposable diapers where the elastic material was used as leg or waist cuff material, see column 12, lines 15-20. the applicant is more specifically referred to the abstract of the disclosure, column 3, lines 61-column 4, line 66, column 5, lines 2-10, column 7, lines 55-62, column 8, lines 14-25, and column 13, lines 48-68 for a description of the use of the mechanically

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manipulated elastic materials. The applicant is also referred to column 2, lines 50-59, column 3, lines 4-8, and column 3, lines 14-26 for the use of heat shrinkable elastic materials which are later activated by the consumer. The applicant is advised that the use of nonwoven materials which were stretchable and which were stretched in the activation of the elastics in Baird appears to have been suggested by the reference. It should be noted that such materials are stretchable in multiple directions. In any event, one skilled in the art of manufacturing a disposable diaper would have readily appreciated that the use of such nonwoven materials would have been within the skill level of the ordinary artisan in the manufacture of a diaper wherein the nonwoven web was part of the backsheet material or topsheet material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an elastic material in the manufacture of a disposable diaper wherein the material was in a state after manufacture wherein the diaper was not gathered until used by the individual wherein one activated the elastic material to gather the diaper in the finished usage in Baird.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-13 and 15-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Baird in view of any one of Reiter, Lancaster et al or E.P. 650,714.

The reference to Baird is discussed in full detail above in paragraph 4 and applicant is referred to the same for a complete discussion of the reference. The reference failed to expressly

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state that the elastic materials would have been applied upon the backsheet and/or topsheet of the disposable garment in the manufacture of the same. it would however, have been obvious to attach the elastics to such materials as evidenced by any one of Reiter, Lancaster et al or E.P. 650,714. Each one of Reiter (the heat shrinkable materials were applied to the waistband to the backsheet), Lancaster (heat shrinkable material 16 applied between the topsheet 6 and the backsheet 4 for the leg elastics) and E.P. '714 (mechanically manipulated composite elastic material which can be associated with the topsheet or backsheet of a disposable absorbent article) suggested that it was known at the time the invention was made to assemble the elastic material to a topsheet or backsheet material in the manufacture of a disposable absorbent article (where in each case the elastic material was a latent elastic material which was activated after assembly of the disposable absorbent article with either heat or mechanical manipulation which was suggested as a useful activation in Baird). It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the elastic materials of Baird for a disposable absorbent article wherein the elastics were applied to the topsheet or backsheet of the disposable absorbent article as such elastics were known to have been disposed in the identified areas as suggested by any one of Reiter, Lancaster et al or E.P. 650,714.

While the references to any of Reiter, Lancaster et al or E.P. 650,714 did not expressly state the make up of the topsheet material or backsheet materials, the specified materials of the claims are taken as conventional in the art. The applicant is advised that the state of the prior art is such that one skilled in the art at the time the invention was made would have known what materials were included for topsheets and backsheets and applicant has listed none but that which is commonplace to the art. The specified materials of the topsheet and backsheet are taken as

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conventional and the use of such commonplace materials for the topsheet and backsheet of the disposable absorbent article would have been within the purview of the ordinary artisan.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 6 further taken with any one of Roessler et al or Wideman.

While the references as set forth above in paragraph 6 suggested that those skilled in the art at the time the invention was made would have incorporated the elastic material in the leg elastics, the references failed to teach or suggest the use of multiple elastics in this region of the disposable absorbent wherein the legs were disposed. The references additionally failed to teach that those skilled in the art at the time the invention was made would have tensioned the elastics to differing degrees in this region of the disposable garments. However, the ordinary artisan in the manufacture of a disposable absorbent article would have known to incorporate multiple elastics in the absorbent article wherein the elastics were provided with different degrees of tension therein as evidenced by either one of Roessler et al or Wideman. The reference to either one of Wideman or Roessler et al suggested that it was known at the time the invention was made to incorporate plural elastic members in a disposable absorbent article and additionally that it was known to provide the elastics with different degrees of tension in the absorbent article as desired (see column 6, lines 28-35 of Roessler et al and column 5, lines 22-47 of Wideman and Figure 2). One skilled in the art would have readily appreciated that having one elastic member under no tension and another under low tension would have resulted in an assembly wherein the elastics had differential tension in the final assembly. The particular degree of tensioning applied to the elastics would have been determined through routine experimentation in order to achieve the desired degree of elasticity in the absorbent article and required fit in the leghole area, for

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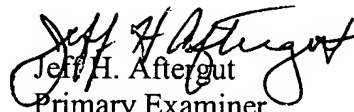
example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate plural elastics in the region of the disposable absorbent article wherein the elastics were under different tensions as suggested by either one of Roessler et al or Wideman in the process of making a disposable absorbent article as set forth above in paragraph 6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. After December 18, 2003, the examiner can be reached at 571-272-1212. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
December 1, 2003